

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4534 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

SHANTABEN W/O GIRISHBHAI NANJIBHAI VAGHARI

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MS. LR POOJARI, APP for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 16.4.1996 passed by the District Magistrate, Kheda, detaining the petitioner under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 16.4.1996

and since then the petitioner is lodged under detention at Rajkot District Jail, Rajkot.

This Special Civil Application was filed in this Court on 1.7.1996 and on 2.7.1996 Rule returnable for 2.8.1996 was issued. So far no reply has been filed on behalf of the respondents nor any affidavit has been filed by the Detaining Authority. The grounds of detention which are enclosed with the detention order show that certain cases were registered against the petitioner at Police Station, Mehmabad during years 1993,1994, 1995 and 1996 under the Prohibition Act. The Detaining Authority after taking note of the allegations in all these 14 criminal cases which are pending trial has found that the petitioner was engaged in an unauthorised liquor business of manufacture and sale and has created an atmosphere of terror amongst the innocent people in the nearby area and had become problem for the public order against the security of the person and properties of the members living in the area.

Besides this he has taken into consideration the statements made by the four witnesses against the petitioner's activities showing that the petitioner while doing unauthorised business of country liquor had been carrying on activities of extorting money and the witnesses have deposed that the petitioner was headstrong person. She has been threatening and beating the witnesses and other innocent persons and on account of these activities the public peace is disturbed in the concerned areas. The reference has been made to the incident in which she had purchased a pair of chappals from the witness without making payment and when the payment was demanded by the witness at S.T.Stand, Mehmabad, the petitioner got enraged against the witness and publicly beaten the witness with the help of her associates and when the witness raised an alarm no body was ready to give evidence out of her fear. Similar allegations have been made by the other two witnesses. The witnesses have also requested for keeping their identity secret. They were frightened of the petitioner for their security. On account of these activities of the petitioner, the petitioner has been taken to be a bootlegger and a person engaged in antisocial activities. The Detaining Authority has found that the fear expressed by the witnesses for reasons of their security out of fear of petitioner was genuine and accordingly the identity of these witnesses has been kept secret. But the Detaining Authority has formed the opinion that in the facts and circumstances the petitioner's detention was warranted as other steps with regard to externment

etc. could not have served the purpose to prevent the petitioner from carrying on the antisocial activities as above.

I have considered the submissions made on behalf of both the sides. I need not deal with all the grounds on which the detention order is challenged because I find that the allegations as have been levelled do not constitute a case of breach of public order. I have already considered the similar allegations in Special Civil Application No. 3879 of 1996 decided on 4.10.1996 and after considering the ratio of the judicial pronouncements by the Supreme Court and this Court it has been found that the allegations such as levelled in the present case do not constitute the case of breach of public order and at the most it is a case of breach of law and order. The reasoning on which the Special Civil Application No. 3879 of 1996 has been allowed applies with full force on the facts of the given case. It is held that the detention order as passed in this case was not at all warranted.

Accordingly this Special Civil Application is allowed. The detention order dated 16.4.1996 passed by the District Magistrate, Kheda is hereby quashed and set aside. The petitioner's detention is declared to be illegal and the respondents are directed to release the petitioner-detenu and set her at liberty forthwith if not required in any other case. Rule made absolute.
